

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Anthony Collett,

Plaintiff,

vs.

Mihalick Commercial Maintenance, LLC
and David Mihalick

Defendants.

No. _____

COMPLAINT

COMES NOW Plaintiff, Anthony Collett ("Plaintiff"), individually, and by and through the undersigned attorney and sues the Defendants, Mihalick Commercial Maintenance, LLC ("Defendant Mihalick Commercial Maintenance") and David Mihalick ("Defendant Mihalick"), (collectively, "Defendants"), and he alleges as follows:

PARTIES

1. At all material times, Plaintiff is an individual residing in Lorain County, Ohio.

2. At all material times, Defendant Mihalick Commercial Maintenance was a corporation duly licensed to transact business in the State of Ohio. Defendant Mihalick Commercial Maintenance does business, has offices, and/or maintains agents for the transaction of its customary business in Lorain County, Ohio.

3. At all relevant times, Plaintiff was an employee of Defendant Mihalick Commercial Maintenance. At all relevant times, Defendant Mihalick Commercial Maintenance, acting through its agents, representatives, employees, managers, members,

1 and/or other representatives had the authority to hire and fire employees, supervised and
2 controlled work schedules or the conditions of employment, determined the rate and method
3 of payment, and maintained employment records in connection with Plaintiff's Employment
4 with Defendant Mihalick Commercial Maintenance. In any event, at all relevant times,
5 Defendant Mihalick Commercial Maintenance was an employer subject to the Fair Labor
6 Standards Act (FLSA) and employed Plaintiff.
7

8 4. At all relevant times, Defendant Mihalick owns, operates as a manager of,
9 operates as a member of, and/or possesses a similar interest in Defendant Mihalick
10 Commercial Maintenance. At all relevant times, Defendant Mihalick had the authority to hire
11 and fire employees, supervised and controlled work schedules or the conditions of
12 employment, determined the rate and method of payment, and maintained employment
13 records in connection with Plaintiff's Employment with Defendant Mihalick Commercial
14 Maintenance. In any event, at all relevant times, Defendant Mihalick was an employer subject
15 to the FLSA and employed Plaintiff.
16
17

18 5. Upon information and belief, Defendants were and continue to be residents of
19 Lorain County, Ohio.

20 6. At all relevant times, Plaintiff was an "employee" of Defendant Mihalick
21 Commercial Maintenance and Defendant Mihalick as defined by 29 U.S.C. § 203(e)(1).
22

23 7. The provisions set forth in 29 U.S.C. § 207(a) of the FLSA apply to Defendant
24 Mihalick Commercial Maintenance and Defendant Mihalick.

25 8. At all relevant times, Defendant Mihalick Commercial Maintenance and
26 Defendant Mihalick were and continue to be employers as defined by 29 U.S.C. § 203(d).
27

NATURE OF THE CLAIM

16. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

17. Defendants own and/or operate Mihalick Commercial Maintenance, LLC., an enterprise located in Lorain County, Ohio.

18. Plaintiff was employed by Defendants from approximately March 1, 2013, through approximately October 31, 2013; from approximately January 1, 2014 through September 30, 2014; and from approximately November 1, 2014 through March 31, 2016. At all times that Plaintiff was employed by Defendant, Plaintiff worked as a landscaper and snow plower. At all relevant times, Plaintiff was non-exempt from the FLSA's overtime requirements.

19. Defendant improperly classified Plaintiff as an independent contractor. However, at all times, Plaintiff was an employee of Defendants.

20. While employed by Defendants, Plaintiff worked between 50 and 60 hours per week.

21. For the entire duration of Plaintiff's employment with Defendants, Defendants had a consistent policy and practice of requiring Plaintiff to work well in excess of forty (40) hours per week without paying him one and one-half times his regular rate of pay for all hours worked over forty (40) hours per week.

22. As a result of Defendants' failure to pay Plaintiff one and one-half times his regular rate of pay for hours worked over forty (40) hours per week, Defendants violated 29 U.S.C. § 207(a).

FACTUAL BACKGROUND

23. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

24. Defendants hired Plaintiff to work as a landscaper and snow plower.

25. Defendant improperly classified Plaintiff as an independent contractor. However, at all times, Plaintiff was an employee of Defendants.

26. Defendants hired/fired, issued pay, supervised, directed, disciplined, scheduled, and performed all other duties generally associated with that of an employer with regard to Plaintiff.

27. Defendants instructed Plaintiff about when, where, and how to perform his work.

28. Plaintiff, in his work for Defendants, used Defendants equipment and wore a company uniform.

29. Defendants controlled Plaintiffs schedule.

30. The following further demonstrate that Plaintiff was an employee.

- a. Defendants had the sole right to hire and fire Plaintiff;
- b. Defendants made the decision not to pay overtime;
- c. Defendants supervised Plaintiff and subjected Plaintiff to Defendants' rules;
- d. Plaintiff had no financial investment with Defendants' business;
- e. Plaintiff had no opportunity for profit or loss in the business;
- f. The services rendered by Plaintiff in his work for Defendants was integral to Defendants' business;

1 g. Plaintiff was hired as a permanent employee, working for Defendants for more
2 than two years.

3 31. Defendants classified Plaintiff as an independent contractor to avoid
4 Defendants' obligation to pay Plaintiff one and one half time his regular rate of pay for all
5 hours worked in excess of 40 hours per week

6
7 32. Plaintiff was a non-exempt employee.

8 33. From the beginning of Plaintiff's employment through the present day,
9 Defendants failed to properly compensate Plaintiff for any of his overtime hours. During this
10 time, Plaintiff worked approximately sixty (60) hours per week.

11
12 34. Plaintiff was not a manager. Plaintiff did not have supervisory authority over
13 any employees, did not possess the authority to hire or fire employees, did not possess
14 authority to make critical job decisions with respect to any of Defendants' employees, did not
15 direct the work of two or more employees, and did not exercise discretion and independent
16 judgment with respect to matters of significance.

17
18 35. Plaintiff's primary duty was not the management of the enterprise in which he
19 was employed or any recognized department of the enterprise.

20 36. From the beginning of Plaintiff's employment through the present day,
21 Defendants failed to properly compensate Plaintiff for any of his overtime hours.

22
23 37. Defendants knew that – or acted with reckless disregard as to whether – their
24 refusal or failure to properly compensate Plaintiff over the course of his employment would
25 violate federal and state law, and Defendants were aware of the FLSA minimum wage

1 requirements during Plaintiff's employment. As such, Defendants' conduct constitutes a
2 willful violation of the FLSA.

3 38. Defendants refused and/or failed to properly disclose to or apprise Plaintiff of
4 his rights under the FLSA.

5 **COUNT ONE: FAIR LABOR STANDARDS ACT**
6 **FAILURE AND/OR REFUSAL TO PAY OVERTIME**

7 39. Plaintiff realleges and incorporates by reference all allegations in all preceding
8 paragraphs.
9

10 40. In a given workweek, and during each and every workweek, during which
11 Plaintiff was employed by Defendants, Plaintiff regularly and consistently worked
12 approximately twenty (20) hours of overtime per week, and Defendants did not pay Plaintiff
13 one and one-half times his regular rate of pay for such time worked.
14

15 41. For example, and upon information and belief, during the workweek of
16 February 7, 2016, Plaintiff was scheduled, and worked, for more than 40 hours. Defendants
17 failed and/or refused to compensate Plaintiff at one and one-half times his regular rate of pay
18 for all time he worked in excess of forty (40) hours.

19 42. As a result, Defendants have intentionally failed and/or refused to pay Plaintiff
20 overtime according to the provisions of the FLSA.
21

22 43. Defendants further have engaged in a widespread pattern and practice of
23 violating the provisions of the FLSA by failing to pay Plaintiff in accordance with 29 U.S.C. §
24 207(a).
25

26 44. Although at this stage, Plaintiff is unable to state the exact amount owed for all
27 time worked during the course of his employment, Plaintiff believes that such information will

1 become available during the course of discovery. Furthermore, when an employer fails to keep
2 complete and accurate time records, employees may establish the hours worked by their
3 testimony, and the burden of overcoming such testimony shifts to the employer.

4 45. Defendants knew that – or acted with reckless disregard as to whether – their
5 refusal or failure to properly compensate Plaintiff over the course of his employment would
6 violate federal and state law, and Defendants were aware of the FLSA minimum wage
7 requirements during Plaintiff's employment. As such, Defendants' conduct constitutes a
8 willful violation of the FLSA.
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10 46. Defendants have and continue to willfully violate the FLSA by not paying
11 Plaintiff a wage equal to one and one-half times Plaintiff's regular rate of pay for all time spent
12 performing labor for Defendants in excess of his regular 40-hour workweek.
13

14 47. As a result of Defendants failure or refusal to pay Plaintiff a wage equal to one
15 and one-half times Plaintiff's regular rate of pay for work Plaintiff performed for Defendants
16 in excess of his regular 40-hour workweek, Defendants violated 29 U.S.C. § 207(a). Plaintiff is
17 therefore entitled to compensation of one and one-half times his regular rate of pay, to be
18 proven at trial, plus an additional equal amount as liquidated damages, together with interest,
19 reasonable attorney's fees, and costs.
20

21 48. **WHEREFORE**, Plaintiff, Anthony Collett, individually, requests that this
22 Court enter Judgment against Defendants Mihalick Commercial Maintenance, LLC and David
23 Mihalick, in his favor:
24

- 25 a. Awarding Plaintiff overtime compensation in the amount due to him for all of
26 Plaintiff's time worked in excess of forty (40) hours per work week at an amount
27

1 equal to one and one-half times Plaintiff's regular rate of pay while working at
2 Mihalick Commercial Maintenance, LLC.

- 3 b. Awarding Plaintiff liquidated damages in an amount equal to the overtime
4 award;
5
6 c. Awarding Plaintiff reasonable attorneys' fees and costs and expenses of the
7 litigation pursuant to 29 U.S.C. § 216(b);
8
9 d. For Plaintiff's costs incurred in this action;
10
11 e. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
12 amounts set forth in subsections (a) and (b) above from the date of the payment
13 due for that pay period until paid in full;
14
15 f. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all
16 amounts from the date of such award until paid in full;
17
18 g. For such other and further relief as the Court deems just and proper.

17 RESPECTFULLY SUBMITTED this 30th Day of December, 2016.

18 By: /s/ James L. Simon
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